

## **Arizona's Response to *Wayfair* Eliminates Municipal Retail Tax Codes**

by James G. Busby Jr.

Reprinted from *Tax Notes State*, June 24, 2019, p. 1151

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In this installment of SALT From My Saddle, Busby highlights the provisions of H.B. 2757 that relate to Arizona's new economic nexus standards for remote sellers and marketplace facilitators; addresses the state's efforts to simplify its sales tax structure; and highlights ongoing challenges for remote sellers.

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As predicted,<sup>1</sup> in a move that may increase state and local sales tax collections by as much as \$293 million annually,<sup>2</sup> Arizona's Legislature amended the state tax code to require remote sellers to remit sales tax on proceeds from sales to customers in the state based on economic nexus standards.

The Legislature also adopted marketplace facilitator provisions and preempted cities and

towns from imposing retail sales taxes under their own tax codes.

These changes will go into effect on October 1, 2019.

### Arizona's Economic Nexus Standards for Remote Sellers

Arizona's economic nexus standard for remote sellers applies:

- for calendar year 2019, when gross retail sales to customers in the state not facilitated by a marketplace facilitator exceed \$200,000 in the previous or current calendar year;
- for calendar year 2020, when gross retail sales to customers in the state not facilitated by a marketplace facilitator exceed \$150,000 in the previous or current calendar year; and
- for calendar year 2021 and for each year thereafter, when gross retail sales to customers in the state not facilitated by a marketplace facilitator exceed \$100,000 in the previous or current calendar year.<sup>3</sup>

Sales by all affiliated parties are aggregated for purposes of determining whether remote sellers satisfy these criteria.

Arizona's economic nexus standards do not take into consideration the number of annual transactions a remote seller may have with customers in the state.

### Economic Nexus Standard for Marketplace Facilitators

Arizona's economic nexus standard for marketplace facilitators applies if the gross retail sales to customers in the state in the current or

<sup>1</sup> See James G. Busby Jr., "Three Huge Tax Issues for Arizona Lawmakers," *State Tax Notes*, Dec. 10, 2018, p. 959.

<sup>2</sup> U.S. Governmental Accountability Office Report to Congressional Requesters, GAO-18-114, 48 (Nov. 2017).

<sup>3</sup> Laws 2019, Ch. 273, section 6.

previous calendar year by the marketplace facilitator on its own behalf or on behalf of at least one marketplace seller exceed \$100,000. Sales by all affiliated parties are aggregated for purposes of determining whether marketplace facilitators satisfy these criteria.<sup>4</sup>

Marketplace facilitators may report tax due for transactions facilitated on behalf of marketplace sellers either with tax collected for transactions made directly by the marketplace facilitator on a combined return or on a separate return.

### All Retail Sales Taxes to Be Imposed Via The State Tax Code

To dramatically simplify Arizona's sales tax structure, the Legislature preempted cities and towns from imposing retail sales taxes under their own tax codes. Thus, effective October 1, all state and local retail sales taxes will be imposed via the state tax code rather than under the state tax code and up to 91 separate municipal tax codes. However, as we will explore in a future column, there still will be several differences between the state tax base and the tax bases for various cities and towns in Arizona.

### Ongoing Challenges for Remote Sellers

In addition to perpetuating some differences between state and local tax bases, Arizona still has not adopted the Streamlined Sales and Use Tax Agreement or many of its features that were designed to reduce administrative and compliance costs for taxpayers.<sup>5</sup> For instance, Arizona's sourcing provisions require remote sellers to apply up to 91 different municipal tax rates and up to 15 different county tax rates. ■

<sup>4</sup> *Id.*

<sup>5</sup> For more information, see Busby, "Arizona Is Not Prepared to Implement the *Wayfair* Decision," *State Tax Notes*, July 30, 2018, p. 485.

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